

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Emergency Alert System)	EB Docket No. 04-296
)	
To: The Commission)	

REPLY COMMENTS



I. Introduction.

ACA's Comments request expedited EAS relief for small cable systems.¹ Absent this action, at least 1,800 very small cable systems will face a compliance crisis in October 2005. None of those systems can support the estimated \$7,250 to \$11,500 needed to purchase and install EAS equipment. At the same time, each of these very small systems currently delivers EAS messages on all broadcast channels and many satellite channels. Commission action to provide broad relief for very small systems will preserve this important source of EAS messages in rural markets. ACA's Comments propose specific adjustments to Section 11.11 to provide this relief and to replace the current *ad hoc* EAS waiver process.

The record provides the Commission with broad support for small system relief. Many commenters recognize the financial hardship that the costs of EAS compliance

¹ Comments of the American Cable Association, EB Docket No. 04-296 (filed October 29, 2004) ("ACA Comments") at 1-3, 8-10.

would impose on small systems.² The record also contains substantial support for significant changes to EAS, changes that might impact the compliance obligations of very small cable systems or provide federal funding for equipment. We encourage the Commission to evaluate all of the proposed alternatives. However, this evaluation should not delay expedited relief for small systems.

We also address two EAS issues involving broadcasters. First, some broadcast interests are demanding new regulations aimed at prohibiting a cable operator from overriding any station with cable-generated EAS messages. The Commission should continue its current policy of leaving this question to be resolved through private agreements. This issue has arisen in many retransmission consent negotiations. In dealings with small cable operators, many broadcasters have agreed to pay the costs of any required adjustments to EAS to prevent override of a station. If the Commission decides to regulate in this area, it should adopt the current industry practice and require broadcasters seeking to block EAS messages generated by small cable systems to pay any associated costs.

Second, some ACA members report that at least one major affiliate group refuses to grant retransmission consent unless the cable operator does not transmit local EAS messages, even when a franchise requires local EAS messages on all channels. This broadcaster demand reflects disregard for public safety and local

² See, e.g., Comments of Partnership for Public Warning, EB Docket 04-296 (filed October 29, 2004) ("PPW Comments") at 11 and 28; Comments of Charter Communications, Inc., EB Docket No. 04-296 (filed October 29, 2004) ("Charter Comments") at 8-9; Comments of the National Cable & Telecommunications Association, EB Docket 04-296 (filed October 29,

government authority. The Commission should make clear that broadcasters cannot restrict cablecasting of local EAS messages when required by local franchise authorities.

II. The record contains ample support for broad smaller system relief.

ACA's Comments propose several adjustments to the EAS regulations pending further evaluation of changes to EAS.³ These include:

Small system relief. Small systems serving more than 1,000 subscribers that are currently subject to an EAS waiver would have until October 1, 2007, to comply with Section 11.11. During that period, these systems would be obligated to pass through EAS messages contained in broadcast and satellite channels carried on the systems. This change will provide more time for a small group of financially distressed systems to comply with the regulations.

Very small system relief. Systems serving 1,000 or fewer subscribers would be obligated to pass through EAS messages contained in broadcast and satellite channels carried on the systems. This will ensure that subscribers receive available EAS messages inserted at the programming source. This will also provide ample time for the Commission, Congress, and other agencies to evaluate changes to the current EAS system.

Customer notice. Small cable operators without EAS equipment would provide subscribers with a simple written notice listing the programming services that carry EAS messages. The notice would increase consumer awareness of where they can find EAS messages on very small cable systems. This notice would be based on a list disseminated by the Enforcement Bureau of satellite channels that have provided notice of voluntary participation under 47 CFR § 11.43.

These changes will ameliorate the burdens facing hundreds of very small systems in October 2005. The changes will also ensure that small cable system customers will continue to receive EAS messages on some channels, as they do now. Equally important, the changes will allow the Commission ample time to study EAS

2004) ("NCTA Comments") at 13-15.

alternatives without diverting resources to address a compliance crisis that would follow the expiration of hundreds of EAS waivers in October 2005.

The record contains ample support for small system relief.⁴ The comments of the Partnership for Public Warning ("PPW") are especially germane:

PPW is not aware of any studies that show any adverse effect from waivers. In the past the FCC has given waivers to small operators for various reasons. These practices should continue especially if the reasons are financial, and there is no adverse impact on the warning picture for those in the coverage area of the requestor of the waiver.⁵

Other commenters advocate subsidies for smaller systems.⁶ This offers another approach to addressing the financial hardship of small system compliance. Because Congressional action is probably necessary to obtain subsidies, this alternative does not likely provide near-term relief.

The detailed data contained in over 250 EAS waiver cases, combined with the record in this proceeding, provide the Commission with a solid foundation to support broad relief for smaller cable systems. Because hundreds of waivers expire in 11

³ ACA Comments at 8-10.

⁴ See, e.g., Charter Comments at 8-9 ("Given the competitive video programming environment, there is real risk that failing to exempt small systems from these requirements or failing to provide funding assistance will result in these systems no longer being financially viable."); NCTA Comments at 14 ("In light of the Commission's well-established record on the economic impact of EAS compliance on small cable systems, NCTA urges the Commission to extend the waivers that are currently in place beyond 2005, throughout the pendency of this proceeding.").

⁵ PPW Comments at 28 (emphasis added).

⁶ Charter Comments at 8-9; NCTA Comments at 13-15; Comments of Sage Alerting Systems ENDEC, EB Docket 04-296 (filed October 29, 2004) ("Sage Alerting Systems Comments") at 9 ("Should EAS costs be prohibitive for small operators, the

months, we ask for expedited action.

III. ACA supports evaluation of all proposals to improve the current EAS system.

Many commenters argue that the current EAS system is ineffective, obsolete, or otherwise in need of substantial overhaul. These commenters suggest replacing or supplementing the system with alternative technologies, such as satellite delivered EAS messages,⁷ national weather alert receivers,⁸ voice and text alerts through wireline telephones and wireless devices,⁹ and emergency alert chips in television and radio receivers.¹⁰ Several commenters advocate extending EAS to distribution systems like DBS, DTV, and satellite radio.¹¹ PPW argues that EAS should combine several alert technologies including broadcast stations, cable systems, weather radio, and private

Commission...should make grants available, on an as needed basis."); PPW Comments at 28.

⁷ Charter Comments at 4.

⁸ Comments of Consumer Electronics, EB Docket 04-296 (filed October 29, 2004) at 4; Comments of Forthright Solutions, EB Docket 04-296 (filed October 29, 2004) at 2-3; Comments of Midland Radio Corporation, EB Docket 04-296 (filed October 29, 2004) at 2; and Comments of Seven Ranges Radio Co. Inc., EB Docket 04-296 (filed October 28, 2004) at 1 and 16.

⁹ Comments of Intrado, Inc., EB Docket 04-296 (filed October 29, 2004) at 1-2; Comments of American Teleservices Association, EB Docket 04-296 (filed October 29, 2004) at 2; Comments of LogicCMG PLC, EB Docket 04-296 (filed October 29, 2004) at 6-8; and Comments of Cellular Emergency Alert Service Association, EB Docket 04-296 (filed October 29, 2004) at 3-4.

¹⁰ Sage Alerting Systems Comments at 9.

¹¹ Charter Comments at 10; NCTA Comments at 15-17; Comments of National Center for Missing and Exploited Children, EB Docket 04-296 (filed October 29, 2004) at 10; Comments of Rehabilitation Engineering Research Center on Telecommunications Access, EB Docket 04-296 (filed October 29, 2004) at 5-6; Comments of State of Ohio Emergency Management Agency, EB Docket 04-296 (filed October 27, 2004) at 3; and Comments of Charleston County,

systems.¹²

ACA encourages the Commission to take the time necessary to evaluate all of the recommendations and proposals on the record. Most of the suggestions will require careful consideration by the Commission, Homeland Security, FEMA, several different industries, and state and regional authorities. In the meantime, small system EAS waivers expire next October. The evaluation of EAS alternatives should not delay expedited relief for smaller systems.

IV. The Commission should address broadcasters' attempts to interfere with EAS messages generated by small cable systems.

We ask the Commission to address two issues concerning broadcasters' attempts to interfere with EAS messages delivered by small cable systems. These are: (i) broadcasters' request for regulations prohibiting cable operators from overriding broadcast signals with EAS messages; and (ii) certain station owners' refusal to grant retransmission consent unless a small cable operator does not cablecast local emergency messages as required by local franchise authorities.

A. Any change to small systems' override requirements should be paid for by the broadcast stations requesting the change.

Several commenters have requested new regulations to prohibit cable operators from overriding broadcast signals with cable-generated EAS messages.¹³ The

South Carolina, EB Docket 04-296 (filed October 29, 2004) at 7-8.

¹² PPW Comments at 6.

¹³ See, e.g., North Carolina Association of Broadcasters, EB Docket No. 04-296 (filed October 29, 2004) at 12-13; National Association of Broadcasters and The Association for

Commission has previously rejected this request and has left the matter to broadcasters and cable operators to address through private agreements.¹⁴ ACA members report many examples where this issue was resolved through negotiations. Often, in cases involving small operators, broadcasters recognize the financial burden of making changes to an existing EAS system, and agree to pay the associated costs of adjustments to prevent override of a system. Below is a representative provision from one of many retransmission consent agreements that address this issue:

Subject to local franchise obligations, and provided that [Station] reimburses any reasonable and actual costs to Operator related to additional equipment that Operator must install, Operator shall not override or interrupt the video or audio retransmission of [Station's] signal for any EAS tests, alerts or messages originated by Operator.

From this, the Commission can conclude that broadcasters and cable operators are resolving this issue without Commission oversight. Consequently, the new regulations requested by certain broadcast interests are not warranted. If the Commission does decide to impose this requirement on cable operators, the Commission should adopt the industry practice we describe above. When dealing with smaller cable systems, broadcasters requesting no override by cable-generated EAS messages should pay the associated costs of modifying existing EAS equipment.

Maximum Service Television, Inc., EB Docket No. 04-296 (filed October 29, 2004) at 19-22; Ohio Association of Broadcasters, EB Docket No. 04-296 (filed October 29, 2004) at 13-14; and Capitol Broadcasting Company, Inc., EB Docket No. 04-296 (filed October 28, 2004) at 3 (advocate eliminating cable's ability to override local broadcast signals due to errors in the alerts).

¹⁴ *In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Third Report and Order*, FO Dockets No. 91-

B. The Commission should clarify that retransmission consent cannot be used to prevent smaller cable operators from transmitting local emergency messages.

ACA members report that at least one major affiliate group is withholding retransmission consent unless the cable operator agrees not to cablecast local emergency messages on the station, even when required by a franchise. As a result, cable customers who happen to be watching a broadcast station could lose access to important information relayed over the cable system. ACA members facing these demands report that the broadcasters articulate no public interest justification for this position, the broadcasters just do not want cable-generated emergency messages of any kind superimposed on their signal.


The Commission should take this opportunity to make clear that broadcasters cannot use retransmission consent to block local emergency messages delivered over cable systems. This interferes with local emergency management and exposes the public to needless risk.

V. Conclusion.

ACA supports the Commission's efforts to study improvements and alternatives to the current EAS system. While that study is underway, small cable systems require expedited relief. The proposals set forth in ACA's Comments will make the necessary adjustments to Section 11.11 and avoid a compliance crisis in October 2005 when current EAS waivers expire.

Respectfully submitted,

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